



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

17 September 2014*

(Reference for a preliminary ruling — Protection of the European Union's financial interests — Regulation (EC, Euratom) No 2988/95 — Article 3 — Proceedings relating to irregularities — European Agricultural Guidance and Guarantee Fund (EAGGF) — Recovery of export refunds wrongly received — Limitation period — Application of a longer national limitation period — General limitation period — Administrative measures and penalties)

In Case C-341/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Supremo Tribunal Administrativo (Portugal), made by decision of 17 April 2013, received at the Court on 24 June 2013, in the proceedings

Cruz & Companhia Lda

v

Instituto de Financiamento da Agricultura e Pescas, IP (IFAP),

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, C.G. Fernlund, A. Ó Caoimh, C. Toader (Rapporteur) and E. Jarašiūnas, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Cruz & Companhia Lda, by P. Sousa Machado and F. Duarte Geada, advogados,
- the Portuguese Government, by L. Inez Fernandes and M. Moreno, acting as Agents,
- the European Commission, by D. Triantafyllou and P. Guerra e Andrade, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: Portuguese.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 3 to 5 of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ 1995 L 312, p. 1).
- 2 The request was made in the context of proceedings between Cruz & Companhia Lda ('Cruz & Companhia') and the Instituto de Financiamento da Agricultura e Pescas, IP (Institute for the Financing of Agriculture and Fisheries; 'the IFAP') concerning a tax enforcement order for the recovery of wine export refunds wrongly received by Cruz & Companhia in the 1995 wine year.

Legal context

EU law

Regulation No 2988/95

- 3 Under the third recital in the preamble to Regulation No 2988/95:

'Whereas detailed rules governing this decentralised administration and the monitoring of their use are the subject of differing detailed provisions according to the Community policies concerned; whereas acts detrimental to the [European Union's] financial interests must, however, be countered in all areas.'

- 4 The fifth recital in the preamble to that regulation states that 'irregular conduct, and the administrative measures and penalties relating thereto, are provided for in sectoral rules in accordance with this regulation'.

- 5 Under Article 1 of that regulation:

'1. For the purposes of protecting the European [Union's] financial interests, general rules are hereby adopted relating to homogenous checks and to administrative measures and penalties concerning irregularities with regard to [European Union] law.

2. "Irregularity" shall mean any infringement of a provision of [EU] law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the [European Union] or budgets managed by [it], either by reducing or losing revenue accruing from own resources collected directly on behalf of the [European Union], or by an unjustified item of expenditure.'

- 6 Article 3(1) and (3) of that regulation provides:

'1. The limitation period for proceedings shall be four years as from the time when the irregularity referred to in Article 1(1) was committed. However, the sectoral rules may make provision for a shorter period which may not be less than three years.

...

The limitation period shall be interrupted by any act of the competent authority, notified to the person in question, relating to investigation or legal proceedings concerning the irregularity. The limitation period shall start again following each interrupting act.

...

3. Member States shall retain the possibility of applying a period which is longer than that provided for in ... [paragraph] 1 ...'

7 Article 4 of Regulation No 2988/95 provides:

'1. As a general rule, any irregularity shall involve withdrawal of the wrongly obtained advantage:

— by an obligation to pay or repay the amounts due or wrongly received,

...

2. Application of the measures referred to in paragraph 1 shall be limited to the withdrawal of the advantage obtained plus, where so provided for, interest which may be determined on a flat-rate basis.

...

4. The measures provided for in this Article shall not be regarded as penalties.'

8 Article 5 of that regulation provides:

'1. Intentional irregularities or those caused by negligence may lead to the following administrative penalties:

(a) payment of an administrative fine;

(b) payment of an amount greater than the amounts wrongly received or evaded, plus interest where appropriate; ...

(c) total or partial removal of an advantage granted by Community rules, even if the operator wrongly benefited from only a part of that advantage;

...

(g) other penalties of a purely economic type, equivalent in nature and scope, provided for in the sectoral rules adopted by the Council [of the European Union] in the light of the specific requirements of the sectors concerned and in compliance with the implementing powers conferred on the [European] Commission by the Council.

2. Without prejudice to the provisions laid down in the sectoral rules existing at the time of entry into force of this Regulation, other irregularities may give rise only to those penalties not equivalent to a criminal penalty that are provided for in paragraph 1, provided that such penalties are essential to ensure correct application of the rules.'

9 Pursuant to Article 11 of Regulation No 2988/95, that regulation entered into force on 26 December 1995.

Regulation (EEC) No 729/70

10 Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy (OJ, English Special Edition 1970(I), p. 218), as amended by Council Regulation (EC) No 1287/95 of 22 May 1995 (OJ 1995 L 125, p. 1; 'Regulation No 729/70'), provided, in

Article 1(1) that the European Agricultural Guidance and Guarantee Fund (EAGGF) is to form part of the budget of the European Union and comprise two sections, the 'Guarantee Section' and the 'Guidance Section'. Under paragraph 2, the 'Guarantee Section' is to finance, inter alia, refunds on exports to third countries.

11 Article 2(1) of that regulation provided:

'Refunds on exports to third countries, granted in accordance with the [EU law] rules within the framework of the common organisation of agricultural markets, shall be financed under the terms of Article 1(2)(a).

...'

12 Article 4 of that regulation was worded as follows:

'1. Each Member State shall notify the Commission of:

(a) details of the authorities and bodies it accredits to pay the expenditure referred to in Articles 2 and 3, hereinafter referred to as "paying agencies".

...

3. Each Member State shall communicate to the Commission [certain] particulars concerning those paying agencies:

- their name and their statutes,
- the administrative, accounting and internal control conditions under which payments are made relating to the implementation of [EU law] rules within the framework of the common agricultural policy,
- the act of accreditation.

The Commission shall be informed forthwith of any change in those particulars.

...'

13 Article 5 of Regulation No 729/70 governed the way in which financing advanced by the national authorities and bodies referred to in Article 4 of the regulation are approved by the Commission in the EAGGF accounts clearance procedure and provided, to that end, in particular, that the accounts clearance decision is to cover the integrality, exactitude and veracity of the accounts submitted.

14 Article 5(2)(c) of that regulation provided more exactly that the Commission:

'(c) shall decide on the expenditure to be excluded from the [European Union] financing referred to in Articles 2 and 3 where it finds that expenditure has not been effected in compliance with [EU law] rules.

Before a decision to refuse financing is taken, the results of the Commission's checks and the replies of the Member State concerned shall be notified in writing, after which the two parties shall endeavour to reach agreement on the action to be taken.

If no agreement is reached, the Member State may ask for a procedure to be initiated with a view to mediating between the respective positions within a period of four months, the results of which shall be set out in a report sent to and examined by the Commission, before a decision to refuse financing is taken. The Commission shall evaluate the amounts to be excluded having regard in particular to the degree of non-compliance found. The Commission shall take into account the nature and gravity of the infringement and the financial loss suffered by the [European Union].

A refusal to finance may not involve expenditure effected prior to twenty-four months preceding the Commission's written communication of the results of those checks to the Member State concerned. However, this provision shall not apply to the financial consequences:

- of irregularities as referred to in Article 8(2);
- concerning national aids, or infringements, for which the procedures referred to in Articles 93 and 169 of the [EC] Treaty have been initiated.'

15 Article 8(1) of that regulation provided that Member States are to take, in accordance with national provisions laid down by law, regulation or administrative action, the measures necessary to satisfy themselves that transactions financed by the EAGGF are actually carried out and are executed correctly, to prevent and deal with irregularities and to recover sums lost as a result of irregularities or negligence.

16 Article 8(2) of that regulation specified that in the absence of total recovery the financial losses consequent on irregularities or negligence are to be met by the European Union unless the irregularities or negligence are attributable to administrative authorities or other bodies of the Member States. Under the final subparagraph of that provision, 'the sums recovered shall be paid to the accredited paying agencies and deducted by them from the expenditure financed by the [EAGGF]. The interest on sums recovered or paid late shall be paid into the [EAGGF]'.

Portuguese law

17 It is apparent from the file before the Court that Portuguese law does not provide for a specific limitation period for the recovery, in favour of the European Union budget, of export refunds wrongly received in that Member State. Article 309 of the Civil Code provides for a general limitation period of 20 years, while Article 304(1) of that code states:

'[W]hen the limitation period has expired, the recipient may refuse to perform the service or object, in any way, to the enforcement of the time-barred right.'

18 Decree-Law No 155/92 of 28 July 1992 lays down the State system of financial administration. Article 36 thereof establishes, in particular, the methods of recovery of public funds to be repaid to the national treasury.

19 Article 40 of that decree-law provides:

'1 — Obligatory repayment of the amounts received shall be limited to five years following their receipt.

2 — The abovementioned period shall be interrupted or suspended by the occurrence of general causes of interruption or suspension of the time-bar.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 20 It is apparent from the file before the Court that Cruz & Companhia is a company whose business object is trading in wines, spirits and products derived therefrom. As part of its activity, that company made a number of exports of wine to Angola, during the 1995 wine year, at a lower price than it would have received if it had sold the wine on the European Union market. Cruz & Companhia applied to the Instituto Nacional de Garantia Agrária (National Agricultural Guarantee Institute; ‘the INGA’) for payment of export refunds and to that end submitted the export authorisation declarations.
- 21 During 2004, the INGA requested Cruz & Companhia to repay the export refunds wrongly received in the sum of EUR 634 995.78.
- 22 During 2005, the INGA instituted judicial debt-collection proceedings to recover that debt from Cruz & Companhia.
- 23 By judgment of 28 December 2011, the Tribunal Administrativo e Fiscal de Viseu (Administrative and Tax Court of Viseu, Portugal), dismissed the action brought by Cruz & Companhia against the recovery procedure, taking the view that it was not time-barred as regards the period of 20 years provided for in Article 309 of the Civil Code.
- 24 Cruz & Companhia appealed against that judgment to the Supremo Tribunal Administrativo (Supreme Administrative Court). It claims, in essence, that the application of the general 20-year limitation period to the area of recovery, by the competent national authority, of export refunds for the 1995 wine year is contrary to EU legislation which is directly applicable in the Portuguese legal system, as well as the principle of legal certainty, the principle of non-discrimination between national disputes and Community disputes and the principle of proportionality. In that regard, Cruz & Companhia argues that, in the case in which it is involved, the four-year limitation period provided for in Article 3(1) of Regulation No 2988/95 should have been applied, given that Portuguese law did not lay down any specific longer period, within the meaning of Article 3(3) thereof. In support of its line of argument, it refers in particular to the case-law as set out in the judgment in *Ze Fu Fleischhandel and Vion Trading* (C-201/10 and C-202/10, EU:C:2011:282).
- 25 Furthermore, even if, in the action before the referring court, a longer national limitation period could be applied by virtue of Article 3(3) of Regulation No 2988/95, Cruz & Companhia claims that this should be the five-year limitation period laid down in Article 40 of Decree-Law No 155/92 of 28 June 1992 on bringing proceedings in respect of irregularities affecting the national financial interests of the Portuguese Republic, given that the principle of non-discrimination precludes the bringing of proceedings in respect of irregularities affecting the European Union’s financial interests from being governed by a limitation rule four times longer than that applicable to analogous national situations.
- 26 The IFAP submits, in essence, that the limitation period provided for in Article 3 of Regulation No 2988/95 did not apply to bringing proceedings in respect of irregularities in the form of administrative measures, within the meaning of Article 4 of that regulation. The limitation rules in Article 3 thereof concern only proceedings brought with a view to imposing administrative penalties, within the meaning of Article 5 of that regulation.
- 27 The referring court notes that the judgment of 28 December 2011 of the Tribunal Administrativo e Fiscal de Viseu follows its established case-law, under which the limitation period for the repayment of export refunds was not that laid down in Article 40 of the Decree-Law No 155/92, but in fact the general limitation period of 20 years laid down in Article 309 of the Civil Code.
- 28 However, the referring court is doubtful as to the applicability in the case before it of the limitation period laid down in Article 3(1) of Regulation No 2988/95. In particular, it queries whether that provision applies only to the relationship between the European Union and the national paying body

for agricultural aid, or also to the relationship between that paying body and the recipient of aid considered to have been wrongly received. That court also asks whether that four-year limitation period is applicable not only to the administrative penalties referred to in Article 5 of Regulation No 2988/95, but also to the administrative measures referred to in Article 4 thereof.

29 In those circumstances, the Supremo Tribunal Administrativo decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

- ‘1. Does Article 3(1) of [Regulation No 2988/95] apply only to relations between the European Union and ... a [national] paying agency of European Union aid, or does it also apply to relations between the paying agency of European Union aid and the beneficiary of aid which is deemed to have been wrongly granted?
2. If the limitation period laid down in Article 3(1) of Regulation No 2988/95 is applicable also to relations between the paying agency of the aid and the beneficiary of the aid deemed to have been granted unduly, should that limitation period be understood as being applicable only where administrative penalties within the meaning of Article 5 of [Regulation No 2988/95] are at issue, or also where “administrative measures” within the meaning of Article 4(1) of that regulation are at issue — in this instance, repayment of sums wrongly received?’

Consideration of the questions referred

The relevance of the answers to the resolution of the dispute in the main proceedings

- 30 In its observations, the Portuguese Government submitted that the dispute in the main proceedings cannot be interpreted in the light of the provisions of Regulation No 2988/95, since it is not the limitation period applicable to the administrative proceedings which is at issue, but the enforcement procedures of the decision for repayment of the aid wrongly granted to Cruz & Companhia, namely a debt recovery procedure. Thus, the system of limitation of proceedings laid down in Article 3 of that regulation could no longer be relied on at the stage of enforcement of a decision of a court which has become enforceable and requires repayment of the aid. Consequently, the answers to the questions referred are not relevant to the decision in the main proceedings.
- 31 Indeed, as the Government points out, Regulation No 2988/95 does not lay down a time-limit for enforcement of a national decision issuing an ‘administrative measure’ within the meaning of that regulation.
- 32 It must be borne in mind that, according to the settled case-law of the Court, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgments in *Pfleger and Others*, C-390/12, EU:C:2014:429, paragraph 26, and *Melki and Abdeli*, C-188/10 and C-189/10, EU:C:2010:363, paragraph 27 and the case-law cited).
- 33 In the present case, it is apparent from the order for reference that the referring court has decided to rule on the basis that Cruz & Companhia had not raised directly in its action the time bar on the debts to be enforced, but the time bar on ‘the obligation to repay the sums received’ resulting from the proceedings following the irregularities found. Thus the referring court poses questions in order to

ascertain, in essence, to what extent Regulation No 2988/95 covers, from the point of view of time, the action of an administrative authority adopting an administrative measure to recover a wrongly incurred debt to the European Union budget.

- 34 In those circumstances, it is appropriate to answer the questions referred by the Supremo Tribunal Administrativo.

Substance

The first question

- 35 By its first question, the referring court asks, in essence, whether Article 3 of Regulation No 2988/95 must be interpreted as applying to procedures brought by the national authorities against recipients of European Union aid following irregularities found by the national body responsible for paying the export refunds under the EAGGF.
- 36 In that regard, it must be borne in mind that, under the Common Agricultural Policy, by application of Article 2 of Regulation No 729/70, refunds on exports to third countries, granted in accordance with the EU rules within the framework of the common organisation of agricultural markets, are to be financed under the terms of Article 1(2)(a) thereof.
- 37 By application of Article 4 of that regulation, the Member States are to designate the authorities and bodies they accredit to pay the expenditure referred to in Articles 2 and 3 thereof. In particular, they must notify the Commission of the administrative and accounting conditions under which the payments relating to the enforcement of the EU rules within the framework of the common organisation of agricultural markets are made. Article 5 of that regulation governs the methods by which the financing advanced by those national authorities and bodies are approved by the Commission in the framework of the procedure of EAGGF account clearance.
- 38 Under Article 8 of that regulation, the Member States, acting in accordance with national provisions laid down by law, regulation or administrative action, are to take the measures necessary to satisfy themselves that transactions financed by the EAGGF are actually carried out and are executed correctly, to prevent and deal with irregularities and to recover sums lost as a result of irregularities or negligence. In the absence of total recovery, the financial consequences of irregularities or negligence shall be borne by the European Union, with the exception of the consequences of irregularities or negligence attributable to administrative authorities or other bodies of the Member States. The sums thus recovered are paid to the paying authorities or bodies and deducted from the expenditure financed by the EAGGF.
- 39 It follows from these provisions that it continues to be the task of the Member States to undertake prosecutions and proceedings for the purpose of the system of levies and refunds (see, to that effect, judgment in *Mertens and Others*, 178/73 to 180/73, EU:C:1974:36, paragraph 16) and that, in the exercise of those prerogatives, the very wording of Article 8(1) of Regulation No 729/70 concerning the recovery by the Member States of sums lost as a result of irregularities, expressly requires the national authorities responsible for operating Community machinery for agricultural intervention to recover sums unduly or irregularly paid without such authorities, acting on behalf of the European Union, on such occasions, being able to exercise a discretion as to the expediency of demanding repayment of EU funds unduly or irregularly granted (see, to that effect, judgment in *BayWa and Others*, 146/81, 192/81 and 193/81, EU:C:1982:146, paragraph 30).

40 In that regard, by requiring the repayment of export refunds wrongly received from the EU budget by an operator, such as Cruz & Companhia in the main proceedings, the competent national authorities act in the name and on behalf of the EU budget and bring proceedings in respect of an irregularity, within the meaning of Article 1 of Regulation No 2988/95, such that they act within the scope of that regulation.

41 Having regard to the foregoing, the answer to the first question is that Article 3 of Regulation No 2988/95 must be interpreted as applying to procedures brought by the national authorities against recipients of European Union aid following irregularities found by the national body responsible for paying the export refunds under the EAGGF.

The second question

42 By its second question, the referring court asks, in essence, whether the limitation period referred to in the first subparagraph of Article 3(1) of Regulation No 2988/95 is applicable not only to proceedings brought in respect of irregularities leading to the imposition of administrative penalties within the meaning of Article 5 of that regulation, but also to proceedings leading to the adoption of administrative measures within the meaning of Article 4 of that regulation.

43 In that regard, it must be borne in mind that Article 1(1) of Regulation No 2988/95 introduces ‘general rules relating to homogenous checks and to administrative measures and penalties concerning irregularities with regard to [EU] law’ in order, as is clear from the third recital in the preamble to that regulation, ‘to combat fraud against the European Union’s financial interests for all areas’ (judgments in *Handlbauer*, C-278/02, EU:C:2004:388, paragraph 31, and *Josef Vosding Schlacht-, Kühl- und Zerlegebetrieb and Others*, C-278/07 to C-280/07, EU:C:2009:38, paragraph 20).

44 The first subparagraph of Article 3(1) of Regulation No 2988/95 fixes, as far as proceedings are concerned, a limitation period which runs from the time when the irregularity was committed, such irregularity, according to Article 1(2) of that regulation, being ‘any infringement of a provision of [EU] law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the European Union’ (judgments in *Handlbauer*, EU :C:2004:388, paragraph 32, and *Josef Vosding Schlacht-, Kühl- und Zerlegebetrieb and Others*, EU:C:2009:38, paragraph 21).

45 It follows therefrom that Article 3(1) of Regulation No 2988/95 is applicable both to irregularities leading to the imposition of an administrative penalty for the purposes of Article 5 thereof and to irregularities which are the subject of an administrative measure for the purposes of Article 4 of that regulation, a measure which is intended to withdraw the wrongly obtained advantage without however constituting a penalty (see, to that effect, judgments in *Handlbauer*, EU:C:2004:388, paragraphs 33 and 34, and *Josef Vosding Schlacht-, Kühl- und Zerlegebetrieb and Others*, EU:C:2009:38, paragraph 22).

46 However, with regard to the main proceedings, it is appropriate, firstly, to examine whether Regulation No 2988/95 applies *ratione temporis*, since the export refunds wrongly received by Cruz & Companhia were paid in respect of operations carried out before the entry into force of that regulation.

47 Before the adoption of Regulation No 2988/95, the EU legislature had made no provision for a rule on limitation applicable to the recovery of advantages wrongly received by economic operators as a result of an act or omission on their part which had or would have had the effect of prejudicing the general budget of the European Union or budgets managed by it (judgment in *Josef Vosding Schlacht-, Kühl- und Zerlegebetrieb and Others*, EU:C:2009:38, paragraph 25).

- 48 Therefore, before the adoption of that regulation, in the absence of provisions of EU law, disputes concerning the recovery of amounts wrongly paid under EU law had to be decided by national courts in application of their own domestic law, subject nevertheless to the limits imposed by EU law, on the basis that the rules and procedures laid down by domestic law were not permitted to have the effect of making it in practice impossible or excessively difficult to recover the aid not due and that domestic law had to be applied in a manner which was not discriminatory as compared to procedures for deciding similar national disputes (see judgment in *Josef Vosding Schlacht-, Kühl- und Zerlegebetrieb and Others*, EU:C:2009:38, paragraph 26).
- 49 By adopting Regulation No 2988/95, and in particular the first subparagraph of Article 3(1) thereof, the EU legislature intended to establish a general limitation rule which was applicable in the area and by which it intended, first, to define a minimum period applied in all the Member States and, secondly, to waive the possibility of recovering sums wrongly received from the European Union budget after the expiry of a four-year period after the irregularity affecting the payments at issue was committed (judgment in *Josef Vosding Schlacht-, Kühl- und Zerlegebetrieb and Others*, EU:C:2009:38, paragraph 27).
- 50 Thus, by the adoption of Article 3(1) of Regulation No 2988/95 and without prejudice to Article 3(3) thereof, the EU legislature thereby defined a general rule on limitation by which it voluntarily reduced to four years the period during which the authorities of the Member States, acting in the name and on behalf of the Community budget, should recover or should have recovered such wrongly received advantages (judgment in *Josef Vosding Schlacht-, Kühl- und Zerlegebetrieb and Others*, EU:C:2009:38, paragraph 29), with the exception, however, of the bringing of proceedings in respect of errors or irregularities committed by the national authorities themselves (see, to that effect, judgment in *Bayerische Hypotheken- und Vereinsbank*, C-281/07, EU:C:2009:6, paragraph 22).
- 51 As regards debts which arose subject to a national rule on limitation, the recovery of which was not yet time-barred thereunder, the entry into force of Regulation No 2988/95 has the effect that, pursuant to the first subparagraph of Article 3(1) thereof, the recovery of such debts must as a rule be time-barred within a period of four years running from the date on which the irregularities were committed (judgment in *Josef Vosding Schlacht-, Kühl- und Zerlegebetrieb and Others*, EU:C:2009:38, paragraph 31).
- 52 In such circumstances, under that provision, the repayment of any sum wrongly received by an operator as a result of an irregularity predating the entry into force of Regulation No 2988/95 must, as a rule, be regarded as time-barred in the absence of any suspensory act adopted in the four years following the commission of the irregularity, a suspensory act which, pursuant to the third subparagraph of Article 3(1) thereof, is to be understood as an act of the competent authority, notified to the person in question, relating to the investigation or legal proceedings concerning the irregularity (judgment in *Josef Vosding Schlacht-, Kühl- und Zerlegebetrieb and Others*, EU:C:2009:38, paragraph 32).
- 53 It follows that, where an irregularity was committed, as in the main proceedings, in the course of 1995 such an irregularity will be covered by the general Community rule providing for a four-year limitation period and will, on that basis, be subject to limitation in the course of 1999 according to the exact date of the commission of that irregularity in 1995, subject nonetheless to the possibility retained by the Member States, under Article 3(3) of Regulation No 2988/95, of providing for longer limitation periods (see, by analogy, judgment in *Josef Vosding Schlacht-, Kühl- und Zerlegebetrieb and Others*, EU:C:2009:38, paragraph 33).
- 54 Secondly, it must be noted that the EU legislature expressly provided, in Article 3(3) of Regulation No 2988/95, that the Member States may apply limitation periods which are longer than that minimum period of four years laid down in Article 3(1) thereof. It did not intend to standardise the periods applicable in the area and, consequently, the entry into force of Regulation No 2988/95

cannot have had the effect of compelling the Member States to reduce to four years the limitation periods which, in the absence of rules of EU law previously in the area, they applied in the past (see, to that effect, judgment in *Ze Fu Fleischhandel and Vion Trading*, EU:C:2011:282, paragraph 25).

- 55 Thus, in the context of the possibility provided for in Article 3(3) of Regulation No 2988/95, Member States retain wide discretion in fixing longer limitation periods which they intend to apply in cases involving an irregularity that is detrimental to the European Union's financial interests (judgments in *Corman*, C-131/10, EU:C:2010:825, paragraph 54, and *Ze Fu Fleischhandel and Vion Trading*, EU:C:2011:282, paragraph 26).
- 56 In that regard, the longer limitation periods which Member States retain the possibility of applying under Article 3(3) of Regulation No 2988/95 may result from general provisions of law predating the adoption of that regulation, so that Member States can apply such longer periods by means of application determined by case-law of a provision of general purport laying down a limitation period of more than four years to the recovery of wrongly received advantages (judgment in *Ze Fu Fleischhandel and Vion Trading*, EU:C:2011:282, paragraph 29).
- 57 It is admittedly easier for an operator to determine the limitation period applicable when that period is established by the national legislature in a provision specifically applicable to the field concerned. Nevertheless, where the national legislature did not adopt a specific provision applicable to a field such as that of repayment of export refunds that have been wrongly received to the detriment of the European Union budget, the principle of legal certainty does not preclude, in principle, the application of a limitation period of a general nature that is laid down in a provision of civil law and exceeds the four-year period provided for in the first subparagraph of Article 3(1) of Regulation No 2988/95 (see, to that effect, judgment in *Ze Fu Fleischhandel and Vion Trading*, EU:C:2011:282, paragraph 33).
- 58 However, such application complies with the principle of legal certainty only if it was sufficiently foreseeable. In this regard, it need only be noted that it is not for the Court to establish, in the present proceedings for a preliminary ruling, whether such a judicially determined practice existed (see, to that effect, judgment in *Ze Fu Fleischhandel and Vion Trading*, EU:C:2011:282, paragraph 34).
- 59 Moreover, the application of a longer national limitation period, such as is referred to in Article 3(3) of Regulation No 2988/95, with a view to bringing proceedings in respect of irregularities within the meaning of that regulation, must not go clearly beyond what is necessary to achieve the objective of protecting the European Union's financial interests (see, to that effect, *AJD Tuna*, C-221/09, EU:C:2011:153, paragraph 79, and *Ze Fu Fleischhandel and Vion Trading*, EU:C:2011:282, paragraph 38).
- 60 It is indeed possible, on the one hand, that a 20-year limitation rule arising from a provision of civil law may appear necessary and proportionate, in particular in the context of disputes between private persons, in light of the objective pursued by that rule and defined by the national legislature (see, by analogy, judgment in *Ze Fu Fleischhandel and Vion Trading*, EU:C:2011:282, paragraph 41). On the other, in the light of the objective of protecting the European Union's financial interests, the application of a 10-year limitation period resulting from a provision of civil law of the Member State in question does not run counter to the principle of proportionality (see, to that effect, *Corman*, EU:C:2010:825, paragraphs 24, 31 and 49).
- 61 However, the Court has already held that, in the light of that objective, for which the EU legislature considered that a limitation period of four, or indeed even three, years was already in itself sufficient to enable the national authorities to bring proceedings in respect of an irregularity detrimental to those financial interests and capable of leading to the adoption of a measure such as recovery of a wrongly obtained advantage, to grant those authorities a period of 30 years goes beyond what is necessary for a diligent public service (see, to that effect, judgment in *Ze Fu Fleischhandel and Vion Trading*, EU:C:2011:282, paragraph 43).

- 62 The Court pointed out in that context that that service owes a general obligation of diligence when verifying the legality of payments made by it that are borne by the European Union budget, given that the Member States must observe the obligation of general diligence under Article 4(3) EU, an obligation which entails that they must take steps to rectify irregularities promptly. In those circumstances, providing Member States with the possibility of granting the public service a much longer period within which to act than that laid down in the first subparagraph of Article 3(1) of Regulation No 2988/95 could, in a certain way, encourage inertia on the part of the national authorities in bringing proceedings in respect of ‘irregularities’ within the meaning of Article 1 of Regulation No 2988/95, whilst exposing operators, firstly, to a long period of legal uncertainty and, secondly, to the risk of no longer being in a position to prove at the end of such a period that the transactions in question were lawful (see, to that effect, judgment in *Ze Fu Fleischhandel and Vion Trading*, EU:C:2011:282, paragraphs 44 and 45).
- 63 Such considerations are also valid as regards the application of a 20-year limitation period laid down in a provision of the Civil Code with a view to bringing proceedings in respect of an irregularity, within the meaning of Article 1 of Regulation No 2988/95. In any event, if a four-year limitation period were to appear, from the national authorities’ point of view, too short to enable them to bring proceedings in respect of irregularities displaying a certain complexity, it would always be open to the national legislature, within the framework of the possibility provided for in Article 3(3), to adopt a longer limitation rule such as Article 40 of Decree-Law No 155/92 (see, to that effect, judgment in *Ze Fu Fleischhandel and Vion Trading*, EU:C:2011:282, paragraph 46).
- 64 However, it is appropriate to point out that, in the absence of such a rule, irregularities such as those giving rise to the main proceedings must, in accordance with the case-law set out in paragraph 53 of this judgment, be regarded as time-barred after four years from the date on which they were committed, taking into account any interruptions to the limitation period provided for in the third subparagraph of Article 3(1) of Regulation No 2988/95 and in compliance with the maximum limit laid down in the fourth subparagraph of Article 3(1) thereof.
- 65 Having regard to the foregoing, the answer to the second question is that the limitation period referred to in the first subparagraph of Article 3(1) of Regulation No 2988/95 is applicable not only to proceedings brought in respect of irregularities leading to the imposition of administrative penalties within the meaning of Article 5 of that regulation, but also to proceedings leading to the adoption of administrative measures within the meaning of Article 4 of that regulation. Although Article 3(3) of that regulation permits Member States to apply longer limitation periods than those of four or three years provided for in the first subparagraph of Article 3(1) thereof, arising from general provisions of law predating the adoption of that regulation, the application of a limitation period of 20 years goes beyond what is necessary to achieve the objective of protection the European Union’s financial interests.

Costs

- 66 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

1. **Article 3 of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities’ financial interests must be interpreted as applying to procedures brought by the national authorities against recipients of European Union aid following irregularities found by the national body responsible for paying the export refunds under the European Agricultural Guidance and Guarantee Fund (EAGGF);**

2. **The limitation period referred to in the first subparagraph of Article 3(1) of Regulation No 2988/95 is applicable not only to proceedings brought in respect of irregularities leading to the imposition of administrative penalties within the meaning of Article 5 of that regulation, but also to proceedings leading to the adoption of administrative measures within the meaning of Article 4 of that regulation. Although Article 3(3) of that regulation permits Member States to apply longer limitation periods than those of four or three years provided for in the first subparagraph of Article 3(1) thereof, arising from general provisions of law pre-dating the adoption of that regulation, the application of a limitation period of 20 years goes beyond what is necessary to achieve the objective of protection the European Union's financial interests.**

[Signatures]